BEST ELECTRONICS SDN BHD

v.

CHEN LI YENG

HIGH COURT MALAYA, KUALA LUMPUR
STEVE SHIM J
[SUIT NO: D5-22-200-96]
28 FEBRUARY 2000

CIVIL PROCEDURE: *Injunction - Mareva injunction - Whether injunction to be granted - Requirements to prove - Whether good and arguable case proved against defendant - Rules of the High Court 1980, O. 29*

By way of a summons-in-chambers dated 8 March 1999, the plaintiff applied pursuant to O. 29 of the Rules of the High Court 1980 for a mareva injunction to restrain the defendant from removing his assets out of jurisdiction.

Such application was based on certain police reports lodged by the plaintiff accusing the defendant of having committed various acts of criminal breach of trust, cheating and fraud resulting in the defendant being charged and brought before the KL Sessions Court.

The issue for consideration was whether such an injunction should be granted.

Held:

[1] A mareva injunction is a form of preventive relief having the effect of restraining a defendant, whether a resident inside or outside the jurisdiction, who has assets within the jurisdiction of the court, from removing those assets out of the jurisdiction before any judgment is obtained by the applicant.

[1a] If there is no real risk of the defendant removing her assets from the jurisdiction, such an injunction should be refused. However if there is a real risk, then if the other requirements are satisfied, the injunction ought to be granted. The other requirements relate to the need to show that the applicant has a good arguable case against the defendant and that the defendant has assets within the jurisdiction.

[2] The mere fact that there are serious criminal charges hanging over the defendant's head does not without more, indicate or suggest that the defendant intends to dissipate, transfer or dispose of her assets out of jurisdiction. There was no evidence to sustain such a possibility.

[Application dismissed.]

Case(s) referred to:
Aspatra Sdn Bhd & Others v. Bank Bumipura Malaysia Bhd & Another [1988] 1 MLJ 97 ***(refd)***
Regent Decorators (M) Sdn Bhd v. Michael Lee [1984] 2 MLJ 78 ***(refd)***
Zainal Abidin Hj Abdul Rahman v. Century Hotel Sdn Bhd [1982] 1 MLJ 260 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 29

For the plaintiff - M/s R Kengadharan
For the defendant - M/s Gooi & Azura

Reported by Mariette Peters-Goh

JUDGMENT

Steve Shim J:

By way of a summon-in-chambers dated 8 March 1999 at encl. 41, the plaintiff had applied, pursuant to O. 29 Rules of the High Court 1980, for the following reliefs:

(a) satu Perintah Mareva yang menahan Defendan samada oleh Defendan sendiri atau pengkhidmat, ejen atau namaan daripada memindahkan daripada bidangkuasa atau menjual, melupuskan, menggadaikan, menyandarkan, memindah milikkan, menerima mendapat kembali atau selainnya walau bagaimanapun jua berurusan dengan aset-aset Defendan samada didalam bidangkuasa (melainkan dan setakat mana ianya melebihi jumlah sebanyak RM1,898,082.00) samada dimiliki oleh Defendan sendiri atau secara bersesama atau secara umumnya atau atas nama syarikat, perkongsian, pemilikan tunggal atau perniagaan yang dikawal atau diarahkan oleh Defendan tersebut sehingga perintah lanjut dengan syarat tiada apa-apa didalam perintah ini akan menghalang mana-mana Bank Syarikat Kewangan daripada melaksanakan apa-apa hak tolakan yang ia mungkin ada sebelum tarikh perintah ini;

(b) satu Perintah bahawa Defendan dalam masa tujuh (7) hari dari tarikh penyampaian Perintah ini untuk mendedahkan nilai, jenis dan di mana kesemua aset-aset Defendan samada atas namanya Syarikat yang dikawal oleh Defendan atau selainnya walau bagaimanapun jua dan bahawa pendedahan itu hendaklah dibuat oleh Defendan atas sumpah melalui Afidavit yang akan difailkan di Mahkamah Mulia ini.

The grounds relied upon by the plaintiff appear to relate to certain police reports lodged by the plaintiff accusing the defendant of having committed various acts of CBT, cheating and fraud resulting in the defendant being charged and brought before the Kuala Lumpur Sessions Court. Counsel for the plaintiff has gone into some detail on the alleged criminal acts, conceivably in an attempt to justify his contention that there is a real risk that the defendant may dissipate or dispose of his assets within the jurisdiction. It has to be noted that the defendant had pleaded not guilty to the charges and the case, after several adjournments, had finally been fixed for hearing commencing on 8 March 2000. Counsel for the defendant has also given us the defendant's version of the facts.

Now, it has been said, often enough, that a mareva injunction granted to an applicant is a form of preventive relief having the effect of restraining a defendant, whether a resident inside or outside the jurisdiction, who has assets within the jurisdiction of the court, from removing those assets out of the jurisdiction before any judgment is obtained by the applicant: (see *Zainal Abidin bin Haji Abdul Rahman v. Century Hotel Sdn Bhd* [1982] 1 MLJ 260; *Regent Decorators (M) Sdn Bhd v. Michael Lee* [1984] 2 MLJ 78; *Aspatra Sdn Bhd & 21 Others v. Bank Bumipura Malaysia Bhd & Another* [1988] 1 MLJ 97). It seems that the heart and core of a mareva injunction is the risk of the defendant removing her assets from the jurisdiction and so stultifying any judgment given by the court in the action. If there is no real risk of this, such an injunction should be refused but if there is a real risk, then if the other requirements are satisfied. the injunction ought to be granted. The other requirements relate to the need to show that the applicant has a good arguable case against the defendant and that the defendant has assets within the jurisdiction.

As I have said, counsel for the plaintiff in the instant case, has gone into some detail on the alleged criminal acts of the defendant which resulted in the arrest of the defendant and the subsequent criminal trial to be heard on 8 March 2000 before the Sessions Court. I do not presume that counsel intended this court to consider the merits of the plaintiff's allegations for the purpose of this application because he must know that it is highly improper to do so as the matter is now the subject of a criminal trial before the Sessions Court. I can only conclude that counsel is merely attempting

to demonstrate the seriousness and gravity of the plaintiff's allegations in justifying his contention that there is a possibility that the defendant may well dispose and/or tranfer part or all her assets out of jurisdiction. In my view, the mere fact that there are serious criminal charges hanging over the defendant's head does not, without more, indicate or suggest that the defendant intends to dissipate, transfer or dispose of her assets out of jurisdiction. It has also been alleged by the plaintiff that there is a possibility that the defendant could dispose and/or transfer (if this is not already done) her assets to an unknown person. There is however no evidence whatsoever to sustain such a possibility. There is no evidence to support any fear or supposition of such a possibility. Indeed, there is nothing in the defendant's conduct, both past and present, to indicate or suggest that she had taken steps to transfer her assets to anyone, whether within or out of jurisdiction or that she had in any way attempted to do so.

In summary therefore when the affidavits filed herein are examined in totality and having read the submissions of learned counsels for the parties concerned and for the reasons stated, I am not satisfied that there is a real danger or risk that the defendant's assets may be removed or dissipated before judgment. On this score alone, I think it fit and proper to dismiss the application at encl. 41 with cost.